BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

PUBLIC VERSION

Joint Application **To Amend Order 2007-2-16 under 49 U.S.C. §§ 41308 and 41309 so as To Approve and Confer Antitrust Immunity on Certain Alliance Agreements** **(STAR ATI Proceeding)**	**Docket OST-2008-0234**

ANSWER OF DELTA AIR LINES, INC.

Communications with respect to this document should be addressed to:

J. Scott McClain
Assistant General Counsel
DELTA AIR LINES, INC.
Law Department (ATG/981)
1030 Delta Boulevard
Atlanta, GA 30354-1989

Andrea Fischer Newman
Senior Vice President – Government Affairs
DELTA AIR LINES, INC.
1212 New York Avenue, N.W.
Washington, D.C. 20005

Alexander Van der Bellen
Managing Director – Government Affairs
& Associate General Counsel
DELTA AIR LINES, INC.
1212 New York Avenue, N.W.
Washington, D.C. 20005
(202) 842-4184
sascha.vanderbellen@nwa.com

November 26, 2008

TABLE OF CONTENTS

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application **To Amend Order 2007-2-16 under 49 U.S.C. §§ 41308 and 41309 so as To Approve and Confer Antitrust Immunity on Certain Alliance Agreements** **(STAR ATI Proceeding)**	**Docket OST-2008-0234**

ANSWER OF DELTA AIR LINES, INC.

I. INTRODUCTION

The 10-way antitrust immunity sought by United, Continental, and eight other Star alliance members[1] would create the largest antitrust immunized alliance grouping ever approved. The Star ATI carriers contend that the Department's recent decision to extend ATI to Delta, Northwest, and their European SkyTeam partners paves the way for this major expansion of the Star alliance, since the Department has recognized that, in principle, it is permissible for more than one U.S. carrier to participate in an ATI alliance.

While Delta agrees that integrated joint venture alliances involving more than one U.S. carrier can produce significant consumer benefits, it is important to recognize that these two alliances are not the same. There are a number of problematic aspects of the proposed Star ATI expansion which constitute a major overreach of the Department's public interest findings in

[1] Continental, United, Air Canada, Austrian Airlines, British Midland Airways (bmi), Lufthansa, LOT, SAS, Swiss, and TAP, (collectively, the "Star ATI carriers")

SkyTeam. If unaddressed, these concerns have the potential for harm that exceeds any benefit of folding Continental into the Star ATI group.

In addition, as a matter of fundamental fairness and administrative due process under the Administrative Procedure Act (APA), the Department has a regulatory obligation to consistently apply its precedents and evidentiary standards to similarly situated applicants in ATI proceedings. The Joint Applicants have failed to make the required public interest showing to substantiate the expansive grant of immunity they are requesting.

Delta's concerns fall into three main areas:

- Overbroad Scope of Immunity. The Star ATI applicants propose a limited joint venture involving *4-way* cooperation among Continental, United, Lufthansa and Air Canada for *transatlantic* passengers. However, the Joint Applicants seek open-ended *10-way global antitrust immunity*. The degree of competitive overlap between Continental, United and the remainder of the Star carriers is substantial. In these circumstances, to support a grant of antitrust immunity, the Department has insisted upon a heightened benefits showing in the form of well advanced Joint Venture integrative efficiencies – which the Joint Applicants have utterly failed to produce. The Department has expressly found that the type of future plans and aspirations the Joint Applicants claim to ascribe to for regions other than the transatlantic are insufficient to support a grant of immunity.
- Insufficient Spillover Safeguards. Lufthansa's 19 percent equity investment in JetBlue, together with Lufthansa's two board seats on JetBlue, create an unacceptable risk of spillover if Lufthansa is simultaneously engaged in antitrust immunized competition with Continental – which also operates a large domestic hub at New York. To fully preclude the potential for domestic spillover, any grant of immunity should be conditional upon Lufthansa relinquishing its two JetBlue

board seats and restructuring its investment to remove the immediate profit potential of collusive actions involving JetBlue and Continental.

- Immunity to Coordinate in Limited Entry Markets. The Department has steadfastly maintained Open Skies as a "fundamental prerequisite" of antitrust immunized alliance cooperation. Not only would the proposed alliance expansion fail to advance U.S. Open Skies policy – it would, for the first time ever, enable Continental and United carriers to engage in antitrust immunized conduct in limited entry markets such as China and Brazil where other carriers cannot respond competitively due to the lack of bilateral rights.

II. THE DEPARTMENT HAS ESTABLISHED A RIGOROUS STANDARD FOR THE REVIEW OF ATI ALLIANCES INVOLVING MORE THAN ONE U.S. CARRIER

The Department has applied a rigorous test to antitrust immunized alliances involving more than one U.S. carrier. While it is certainly possible for multiple U.S. carriers to cooperate in the same immunized alliance, the applicants must meet the Department's strict scrutiny and demonstrate that antitrust immunity is both required in the public interest – and that the applicants will not proceed without the immunity. As explained by the Department in SkyTeam 1:

> Because the antitrust laws represent a fundamental national economic policy, one that serves consumers and travelers well, we recognize that immunity from the antitrust laws should be the exception, not the rule. It is not our policy to confer antitrust immunity simply on the grounds that an agreement does not violate the antitrust laws. Rather, we confer antitrust immunity only upon 'a strong showing on the record that antitrust immunity is required in the public interest, and that the parties will not proceed with the transaction without the antitrust immunity.
>
> Order 2005-12-12 at 33 (emphasis added).

The Department noted in particular that antitrust immunity cases involving "more than one large U.S. carrier" and "a substantial amount of network overlap" deserved "a closer look." *Id.* This is just such a case. There is substantial competitive overlap between the existing

networks of Continental and United/Star ATI. Indeed, nearly 90 percent of Continental's international bookings are in city-pairs already served by Star ATI. DL-2. Using the screening test typically applied by the DOJ, adding Continental to Star ATI will reduce competition in 6,500 U.S.-International city-pairs, affecting 7.3 million passengers. DL-3.

The Department has found that multiple U.S. carriers may nevertheless enter into ATI alliances involving overlapping networks – but only if they can prove integrative efficiency and public benefits sufficient to offset the harm resulting from the elimination of a significant U.S. competitor. While the Star carriers have presented a transatlantic joint venture, their request for open-ended global immunity is unsupported by the record, and the grant of immunity in the circumstances presented would be contrary to Department precedent.

Continental's voluntary decision to migrate from an arms-length global alliance participant in SkyTeam to an immunized member of Star does not create any sort of public interest emergency that would justify shortcutting the Department's normal thorough review process and evidentiary standards applicable to ATI alliances involving more than one U.S. carrier. Indeed, following Continental's exit from SkyTeam, it is free to cooperate with the Star carriers on the same basis Continental participates in SkyTeam without any grant of immunity from the Department.

III. STAR'S OVERLY BROAD SCOPE OF PROPOSED IMMUNITY IS NOT SUPPORTED BY THE RECORD.

Continental, United, Air Canada, and Lufthansa propose to enter into a "four-way JV for transatlantic markets" called the A++ Agreement that will permit the JV partners to engage in coordinated pricing, revenue management, sales, marketing, frequent flyer programs, airport operations, and joint planning and scheduling of transatlantic routes. The applicants assert that this enhanced coordination will benefit consumers and strengthen inter-alliance competition. Given its own experience and the experience of its Northwest subsidiary, Delta is well aware of the consumer benefits that can arise within the scope of a properly structured joint venture.

However, unlike SkyTeam, Continental is not seeking the narrowly tailored transatlantic immunity that is necessary to implement the revenue-sharing joint venture that has been presented. Instead, Continental is seeking antitrust immunity with United and the Star ATI partners on an open-ended global immunity basis – which would include a myriad of important U.S. O&D routes world-wide that are outside the scope of the proposed transatlantic JV. There are no "second stage" agreements covering cooperation outside the transatlantic that would enable the Department to make a reasoned public interest decision about the benefit of such cooperation – and whether any resulting consumer benefits would be sufficient to balance the harms resulting from the elimination of all international competition between Continental and United.

The 105 page Joint Application and the 44 page supplemental information filing are long on words and full of aspirations about how the Continental, United and the Star applicants *might* use antitrust immunity to explore joint venture cooperation in Canada, Latin America, and the Asia/Pacific regions *in the future*. Joint Application (public version) at 47-48; confidential supplement at 5-7. But, the record is completely devoid of any *actual plans and second stage agreements* supporting current plans to do so. Ironically, United cites UA 2715-2716 as evidence that [ ] The reality is that United and Air Canada have had antitrust immunity for more than 11 years and failed to implement a joint venture.

There are no concrete plans for United and Continental to enter into a joint venture for service outside the transatlantic, [

]

The vague, undefined future plans of Continental to coordinate with United and the Star carriers outside the transatlantic fail to satisfy the Department's clear evidentiary standard and heightened benefits showing required to immunize cooperation between two major U.S. carriers. Order 2005-12-12 (SkyTeam 1) Thus the Department rejected virtually identical arguments and assertions by Delta, Northwest and their respective SkyTeam partners for ATI to cover future plans (which were unsupported by an agreement at the time) to enter into a transatlantic joint venture:

> "the consumer benefits that are perhaps most directly attributable to antitrust immunity appear to be dependent on the successful implementation of an economic benefits sharing agreement among the alliance partners. . . We are unable to find that those theoretical benefits, even if substantial, justify a grant of immunity for the Joint Applicants at this time. . . . [In the absence of a negotiated second-stage agreement] the Department does not have sufficient information to evaluate whether . . . a new arrangement would provide substantial public benefits that could be effectively passed on to consumers.
>
> Order 2005-12-12 at 37.

While the Joint Applicants here have presented a draft second-stage agreement covering transatlantic joint venture services between Continental, United, Lufthansa and Air Canada, there are no such agreements covering other regions. In these circumstances, under the Department's own well-articulated standard, consideration of world-wide immunity for combining the global operations of United and Continental is plainly premature. There are no current plans for revenue-sharing outside the transatlantic, and the Department lacks "sufficient information to evaluate" whether antitrust immunity for second-stage agreement in other regions would benefit U.S. consumers.[2]

---

[2] Cooperation between Continental and Air Canada would eliminate competition between those carriers on important U.S.-Asia and U.S.-Europe routes where they compete today for U.S. passengers. It is unclear how future joint venture cooperation between Continental and Air Canada for Canada-Latin America passengers (should it ever transpire) would benefit U.S. consumers – or whether immunity from U.S. antitrust laws is actually necessary to enable such cooperation. To the extent Air Canada might flow Canadian-origin traffic onto Continental's

The types of generalized cooperation and efficiencies currently envisioned by the Joint Applicants in the Joint Application concerning non-transatlantic regions -- such as sharing of lounges, real estate, and local staffing, do not require immunity from the U.S. antitrust laws – and clearly do not meet the Department's stringent standards for only approving strictly necessary grants of immunity between U.S. carriers.[3] If and when the Joint Applicant's plans mature and are supported by fully negotiated second stage agreements, the Joint Applicants would be free to resubmit an application (as the SkyTeam carriers did) for renewed consideration of their request for antitrust immunity outside the scope of the transatlantic JV.

A. Substantial competitive overlap exists between the global networks of Continental and United/Star ATI

An overview of the routes experiencing a decrease in concentration at a regional level is illuminating. An analysis of MIDT data[4] for the routes on which United/Star ATI and Continental each carry at least five percent of the traffic and together account for more than 40 percent of the traffic reveals that, between the United States and Asia, there are 96 routes on which only one competitor to Continental/United/Star ATI would remain following a global grant of immunity. Moreover, there are 241 U.S.-Asia routes on which only two competitors would

---

Latin America flights, those Canadian-origin passengers are competing for limited seats (including in limited-entry markets) on Continental's flights – and have the potential to displace U.S. travelers that might otherwise travel via Continental's broad U.S. network. The Department has held that benefits to 6th freedom foreign nationals is not a public interest benefit. *See, e.g.* Order 98-12-33 (disfavoring United's Los Angeles-Sao Paulo service proposal for reliance on 6th freedom Asia passengers which detracted from U.S. public benefits).

[3] There is no merit to the Joint Applicants' assertion that Continental should, as a matter of course, receive world-wide ATI to join the "existing Star alliance, which is global in scope" (Nov. 3 Answer) rather than the limited transatlantic immunity that is actually necessary to implement the proposed joint venture. Star's "global" membership also includes Asiana and Air New Zealand – with whom United already enjoys antitrust immunity. Yet, Asiana and Air New Zealand are not part of this antitrust immunity application. Clearly the existing Star "global" members do not have a problem with coordinating with different partners in different regions.

[4] MIDT Data Year Ended 1st Quarter 2008.

remain. Between the United States and Latin America, there are 122 routes on which only one competitor to Continental/United/Star ATI would remain following a global grant of immunity, and 309 U.S.-Latin America routes on which only two competitors would remain. Finally, between the United States and Canada, there 444 routes on which only one competitor to Continental/United/Star ATI would remain, and 524 routes on which only two competitors would remain, following a global grant of immunity.

With respect to traffic between the United States and Asia, one area of significant concern involves competition on U.S.-China routes. Continental summed it up well in its own 2007 China Route case brief – when it was competing with United:

> an award to United would be anticompetitive on its face. Increasing United's dominance of nonstop U.S.-China service at the expense of new entry [by Continental] at Shanghai would be entirely without rational justification . . . . Thanks to United's relationship with China's largest airline, Air China, its developing relationship with Shanghai Airlines, a second major Chinese airline, its proposed China codeshare relationship with US Airways and its near-monopoly on U.S.-China nonstop routes, United already offers [many U.S.-China services]. . . . Given the service options offered by United and Air China, it should be no wonder that the two carriers together control 49.7% of the entire U.S.-Beijing traffic, ten times Continental's current share.
>
> Brief of Continental OST-2006-25275 at 27-29.

By the Star ATI application, Continental now proposes to join forces with United and the very Star carriers it warned were dominating competition on U.S.-China routes. While the U.S. government has succeeded in negotiating some new China service opportunities, the bilateral remains highly restrictive. The available frequencies have been allocated among U.S. carriers in hard-fought route proceedings -- United holds 42 (38 percent), Northwest/Delta holds 35 (31 percent), Continental holds 14 (13 percent), American holds 14 (13 percent), and US Airways holds 7 (6 percent). Granting the Star ATI application would make United, already the largest U.S. carrier to China, even larger. DL-4.

Of further concern, United's existing ATI partner, Air Canada, operates 28 peak season flights per week between Canada and China (Beijing and Shanghai). Air Canada offers an

extensive U.S. network that feeds its Canada-China flights, enabling it to offer competitive U.S.-China service. Combining Continental with United/Air Canada would significantly limit competition on U.S.-China routes. DL-5, 6. [

]. Because frequencies are limited under the U.S.-China bilateral,[5] other U.S. carriers would have no ability to replace lost competition between United/Air Canada and Continental if the requested global ATI were to be granted.

The scope of the U.S.-China competitive overlap problem is substantial. DL-7. There are 477 routes on which United/Star ATI and Continental each carry at least five percent of the traffic and together account for more than 40 percent of the traffic. On these overlap routes, which accounted for more than 321,000 bookings during the year ending 1Q2008, Continental and United/Star ATI possessed an average share of 73 percent.[6] Of these overlap routes, there are 69 on which Continental and United/Star ATI are the only competitors; granting the requested global ATI would create a monopoly on these routes. Moreover, there are 168 U.S./China routes on which only one other competitor will exist, and 148 U.S./China routes on which only two other competitors will exist, following a grant of global antitrust immunity. Collectively, these routes account for 11 percent of all bookings between the U.S. and China.

Traffic between the United States and other countries in Asia would suffer a similar loss of competition with minimal, if any, offsetting benefits. For example, on overlap routes between the United States and Hong Kong accounting for roughly 200,000 bookings annually,

---

[5] Due to the current global economic crisis, a number of carriers have temporarily postponed U.S.-China service plans. However, when global demand rebounds, the existing caps under the U.S.-China agreement will remain a very significant constraint on the introduction of competitive service in this important market.

[6] The average shares between the United States and other countries referenced in this section are weighted averages for which the weights are the numbers of bookings. In other words, of

Continental and United/Star ATI carry an average 61 percent of the traffic. An immunized Continental/United/Star ATI would carry at least 40 percent of the traffic on overlap routes between the United States and 15 Asian countries (including an average of 59 percent on U.S.-Japan overlap routes and an average of 50 percent on U.S.-Korea overlap routes).[7] Fewer than half of these 15 countries have an Open Skies agreement with the United States, indicating that the threat of entry may be insufficient to deter anticompetitive conduct following a grant of global ATI.

Routes between the United States and Latin America also would suffer a significant loss of competition. For example, traffic between the United States and Brazil is governed by a restrictive bilateral agreement that permits U.S. carriers to operate only 105 weekly passenger service frequencies to any point in Brazil. Just as with China, Continental and United have jousted in prior route case proceedings to secure the valuable limited-entry rights that are required to serve the key U.S.-Brazil markets of Rio de Janeiro and Sao Paulo. Today, American holds 47 of these frequencies (38 percent); United holds 23 (22 percent), Delta holds 21 (20 percent), and Continental holds 14 (13 percent). These frequencies currently are used by U.S. carriers to operate flights only to Sao Paulo, the business and financial center of Brazil, and Rio de Janeiro, a popular leisure destination in Brazil. Both United and Continental currently operate flights to Sao Paolo, and account for nearly 40 percent of U.S.-Brazil frequencies operated to Sao Paulo -- twice as many Sao Paulo frequencies as Delta. DL-8. Under the new agreement signed in June 2008, 49 additional U.S.-Brazil frequencies become available through 2010. However, twenty-one of the frequencies may be used only for service

---

the aggregate bookings on all U.S./China overlap routes, United/Star ATI and Continental account for 73 percent.

[7] Continental and United/Star ATI serve routes between the United States and China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Micronesia, Mongolia, Palau, Papua New Guinea, the

to points other than Sao Paulo and Rio de Janeiro. While seven frequencies will become available to serve Rio de Janeiro in 2009, 28 of the 49 new frequencies can never be used to serve Sao Paulo. The other 21 new frequencies can be used to serve Sao Paulo only when regulatory constraints related to infrastructure at Sao Paulo's airport are removed; it is not clear when (or if) these constraints will be lifted. Thus, it is not clear that entry would be possible to offset the loss to competition on many of the 12 2:1s and 55 3:2s that Continental and United/Star ATI currently operate between the United States and Brazil.

Traffic between the United States and other countries in Latin America would suffer a similar loss of competition with minimal, if any, offsetting benefits. For example, on overlap routes between the United States and Mexico accounting for more than 215,000 bookings annually, Continental and United/Star ATI carry an average 55 percent of the traffic. Granting the requested global ATI would give Continental and United/Star ATI an average share of at least 40 percent of traffic on overlap routes between the United States and 30 Latin American countries,[8] including an average of 76 percent on U.S.-Honduras overlap routes; an average of 74 percent on U.S.-El Salvador routes; and an average of 61 percent on U.S.-Belize routes. Roughly two-thirds of these 30 Latin American countries have no Open Skies agreement with the United States, indicating that the threat of entry may be insufficient to deter anticompetitive conduct following a grant of global ATI.

Philippines, Singapore, Taiwan, Thailand, and Vietnam on which they each possess at least 5 percent of the traffic and collectively possess at least 40 percent of the traffic.

[8] Continental and United/Star ATI serve routes between the United States and Anguilla, Argentina, Aruba, the Bahamas, Belize, Bermuda, Brazil, the Cayman Islands, Colombia, Costa Rica, Cuba, Dominica, the Dominican Republic, Ecuador, El Salvador, Guadeloupe, Guatemala, Honduras, Jamaica, Mexico, Netherlands Antilles, Nicaragua, Panama, Paraguay, Peru, Saint Vincent, Suriname, Trinidad and Tobago, Venezuela, and the British Virgin Islands on which they each possess at least 5 percent of the traffic and collectively possess at least 40 percent of the traffic.

Closest to home, granting the requested ATI to Continental and United/Star ATI would result in the elimination of a competitor on 1,354 U.S.-Canada routes. On 444 U.S.-Canada routes, only one competitor to Continental/United/Star ATI would remain if the requested immunity were granted. Another 524 U.S.-Canada routes would have only two competitors, and roughly 300 routes would have only three competitors, if the requested immunity were granted. All of these routes fall outside the scope of the proposed transatlantic JV and merit scrutiny to determine whether ATI would offer benefits sufficient to offset the potential anticompetitive harms.

B. Carve Outs Are Necessary to Mitigate Harm on Nonstop Overlap Routes Outside the Joint Venture.

Continental and the existing Star ATI carriers overlap on 14 nonstop U.S.-Europe and U.S.-Canada routes, affecting over 2 million passengers. DL-1. All but one of these routes (New York-Frankfurt) is outside the scope of the proposed UA/CO/LH/AC Joint Venture:

Outside Scope of JV?	City1	City2	No. of 5% Competitors pre-ATI	Star ATI Share	CO Share	Combined Share	Annual Bookings
Y	Lisbon, Portugal	New York, NY, USA	2	64%	30%	94%	115,595
Y	Houston, TX, USA	Calgary, AB, Canada	2	40%	55%	96%	83,209
Y	Houston, TX, USA	Toronto, ON, Canada	2	48%	39%	87%	53,733
Y	New York, NY, USA	Ottawa, ON, Canada	2	55%	40%	94%	46,922
Y	Cleveland, OH, USA	Toronto, ON, Canada	2	33%	65%	98%	21,030
Y	New York, NY, USA	Zurich, Switzerland	3	57%	17%	74%	165,310
Y	New York, NY, USA	Vancouver, BC, Canada	3	45%	9%	55%	152,172
Y	New York, NY, USA	Halifax, NS, Canada	3	24%	34%	58%	29,069
Y	New York, NY, USA	Toronto, ON, Canada	4	45%	16%	61%	555,595
Y	New York, NY, USA	Montreal, QC, Canada	4	61%	15%	76%	192,000
Y	Stockholm, Sweden	New York, NY, USA	4	47%	16%	63%	136,515
Y	Copenhagen, Denmark	New York, NY, USA	5	49%	19%	68%	131,532
Y	Geneva, Switzerland	New York, NY, USA	5	48%	26%	74%	110,533
N	Frankfurt, Germany	New York, NY, USA	4	41%	11%	51%	302,758
						Total	2,095,973

Source: OAG November, 2008-October 2009; MIDT YE 1Q2008

As illustrated by the foregoing table, in every case Continental is a significant competitor, ranging from a low of 9 percent to a high of 65 percent market share. The combined ATI alliance would have a dominant share in every nonstop overlap market – with between 51 and 96 percent of bookings.

The DOT has routinely applied carve-out conditions on hub-to-hub nonstop overlap routes in the context of non-JV alliances to prevent harm to time-sensitive customers. As the Department stated when it applied carve-outs to the Atlanta-Paris and Cincinnati-Paris overlap routes resulting from the Delta/Air France alliance: "[Time-sensitive travelers] are most at risk in this case because many of these passengers depend on nonstop service to meet their travel needs, and would lose the benefit of competitive nonstop service upon implementation of the proposed alliance. Therefore, consistent with previous determinations on routes similar to these, we find it appropriate to exclude certain local passengers . . ." (Order 2001-12-18 at 15).

In the most recent SkyTeam ATI Order, the Department indicated a willingness to repeal the carve-outs on the Atlanta-Paris and Cincinnati –Paris hub-to-hub routes – but only after Delta and its partners were ready to implement a fully integrated Joint Venture. The Department reasoned that because the number of affected hub-to-hub local passenger was very small, and that "carve-outs could undermine the effectiveness of the 4-way JV and jeopardize public benefits," maintaining the carve-outs was not necessary after the JV was implemented. Order 2008-4-17 at 10. The Department went on to state that:

> However, the Joint Applicants are not ready to implement the 4-way JV. Since the basis for removing the carve outs in this case depends upon the existence of true integrative benefits, we think that it is appropriate to maintain the status quo, pending implementation of the 4-way JV. Once the 4-way JV is fully implemented, the proposed alliance will not operate with carve outs. Until then, we tentatively find that our approval of the proposed alliance should be conditional upon the continued imposition of carve outs in the Atlanta-Paris CDG and Cincinnati-Paris CDG markets. Id. (emphasis added).

Here, Continental and the Star carriers have presented no concrete plan to include any of the 13 new nonstop overlap routes above within their 4-way transatlantic joint venture. Thus, no "true integrative benefits" that would justify deviation from the Department's historic carve-out condition are present. At minimum, the hub-to-hub routes of Houston-Toronto, Houston-Calgary and Cleveland-Toronto – where the possibility of new entry is remote -- should be subject to the DOT's classic carve-out condition unless and until a Joint Venture is presented

and implemented covering these routes. The DOT should also examine, on a case-by-case basis, whether the current competitive condition and high Star market shares warrant carve-out conditions on any of the additional 10 Star nonstop overlap routes which fall outside the scope of the proposed Joint Venture.

IV. THE JOINT VENTURE WILL REDUCE INTERGATEWAY TRANSATLANTIC COMPETITION ON THE EAST COAST.

There is no question that combining the competing East Coast hubs of Continental at Newark and United at Washington Dulles under the Star ATI umbrella will materially reduce competition for U.S.-Europe passengers in the Eastern half of the United States. Newark and Dulles are situated just 200 miles apart on the Eastern seaboard, and serve the same primary catchment area. By the applicants' own admission: [

] (UA1250-1256).

The degree of lost competition between these dueling East Coast hubs is substantial. Continental and United operate overlapping nonstop service from Newark and Dulles to 21 international destinations. DL-9. In addition, Continental and United operate nonstop overlapping service to 55 domestic U.S. cities from their respective hubs. DL-10. Consequently, 1,155 important U.S.-international city-pairs will lose direct competition via these hubs if this alliance is approved.

It is unclear, based on the limited record, whether the integrative benefits of the JV alliance are sufficient to mitigate these harms. Indeed, there appears to be a material risk that rather than expanding intentional services and nonstop options, the Joint Applicants may rationalize international service at Newark and Washington Dulles. Delta's prior Motions asked the Joint Applicants to discuss the extent to which the East Coast transatlantic gateways of Continental at Newark and United at Washington Dulles compete with one another. Specifically, Delta asked: "Will all transatlantic services be maintained by both U.S. carriers at each hub?" Continental and United responded that they "plan to maintain transatlantic service

at their respective hubs at Newark Liberty and Washington Dulles. . ." (Answer at 6) with the obvious implication that not **all** of the current nonstop services will be maintained.

Instead of maintaining competing nonstop services from IAD and EWR to all current transatlantic destinations, the Joint Applicants assert that: "Preliminary evaluations suggest that Continental should be able to expand its nonstop trans-Atlantic service, initially on hub-to-hub routes such as Houston and New York/Newark-Frankfurt . . ." (Answer at 6, n.8). The Department does not have an adequate record to determine whether and to what extent approval of the alliance will result in rationalization of competing nonstop services in favor of increased hub-to-hub flying on routes already dominated by the Star Alliance.

V. LUFTHANSA'S INVESTMENT IN JETBLUE MUST BE RELINQUISHED OR RESTRUCTURED AS A CONDITION OF IMMUNITY WITH CONTINENTAL

Lufthansa's 19 percent equity investment in JetBlue, together with Lufthansa's two seats on JetBlue's board, create an unacceptable risk of spillover if Lufthansa is simultaneously engaged in antitrust immunized competition with Continental – which also operates a large domestic hub at New York. To fully address the potential for domestic spillover, any grant of immunity should be conditional upon Lufthansa relinquishing its two JetBlue board seats and restructuring its investment to remove the immediate profit potential of collusive actions involving JetBlue and Continental.

The Scheduling Order erred in finding that the relevant issues relating to Lufthansa's investment were addressed in the Joint Applicants' November 3 Answer and "otherwise a matter of public record." Star's superficial Answer provides no details about how the flow of confidential information among Lufthansa, JetBlue and Continental will be managed. Moreover, because the Continental ATI relationship was not contemplated at the time of Lufthansa's initial investment, that issue was not addressed in the public SEC filings and could not have been reviewed by the Department of Justice (DOJ). Stringent remedies are needed here to insure

that competition in the critical New York marketplace is not compromised by improper spillover effects.

Star's contention that Lufthansa's investment stake and management say in JetBlue "does not raise an issue for purposes of the Joint Application" is wishful thinking. Moreover, the assertion that Lufthansa's investment is similar to Northwest's investment in Midwest Airlines is flatly incorrect. The Lufthansa investment relationship with JetBlue differs significantly from Northwest's investment in Midwest Airlines in a number of important ways.

In order to pass muster by the DOJ, the Northwest investment in Midwest had to be carefully structured in a way that gave Northwest no ability to control or influence Midwest following the investment. The DOJ issued a voluminous request for additional documents and data following the initial Hart-Scott-Rodino filing, and subjected every aspect of the investment to extensive scrutiny over a period of six months. Only after a careful analytic review was the DOJ able to conclude that the structure of the transaction left Northwest with neither the ability nor the incentive to behave in an anticompetitive fashion with respect to Midwest. Among the factors the DOJ considered relevant were: (1) the inability of Northwest to obtain access to Midwest's competitively sensitive information, (2) the inability of Northwest to receive any current distributions from Midwest's earnings, and (3) the absence of any control rights on the part of Northwest over Midwest.

In contrast to the Northwest/Midwest situation, Lufthansa has seats on JetBlue's board. Lufthansa has appointed two members to JetBlue's board: (a) Stephan Gemkow, who also serves as Lufthansa's own Chief Financial Officer, and (b) Christoph Franz, who is CEO of Lufthansa-owned Swiss International Airlines. These seats give Lufthansa both influence over JetBlue's operations and access to its confidential information. If Lufthansa also receives current distributions from JetBlue by virtue of Lufthansa's equity investment, then every single factor the DOJ found worked in the favor of Northwest/Midwest cuts against Lufthansa/JetBlue,

with respect to Lufthansa's proposed antitrust immunized relationship to Continental. Indeed, Lufthansa's mechanisms of control over JetBlue, coupled with a grant of ATI with Continental, are the kinds of mechanisms that both the DOJ and the courts have deemed anticompetitive in past cases.[9] While the DOT may have conducted a standard Part 204 fitness review of JetBlue following Lufthansa's investment, that review in no way answers the new competitive questions now raised by Lufthansa's proposed relationship ATI with Continental.

Given the nature of Lufthansa's relationship with JetBlue, the only way to fully preclude the potential for domestic spillover is to require Lufthansa to relinquish its board seats on JetBlue and to restructure its investment (similar to Northwest/Midwest) to remove the current interest in JetBlue's profit stream that would enable Lufthansa to benefit from any diminution of competition among U.S. carriers.

The Joint Applicants erroneously claim that the bilateral "Antitrust Compliance Guidelines" between Continental and United "would encompass any spillover effects on Continental's domestic operations specifically related to coordination with Lufthansa." (Answer at 4). These "Guidelines" are plainly insufficient to address fully the serious spillover consequences of the expanded alliance. For example, neither Lufthansa nor JetBlue are parties to the agreement. Thus, Lufthansa is not prohibited from using confidential information gleaned from its immunized schedule and pricing discussions with Continental in its relationship with JetBlue, or vice versa. In addition, the agreement covers only domestic services, whereas Continental and JetBlue compete on both international and domestic routes. Moreover, the

---

[9] See McTanney v. Stolt Tankers & Terminals, S.A., 678 F. Supp. 118 (E.D. Pa. 1987) (denying a motion to dismiss a Section 7 claim where the defendants controlled the business activities of the acquired company); see also United States v. US West, No. 96 2529, 1997 WL 269482, *10 (D.D.C. 1997) (complaint alleged that the acquiring company's shareholding would allow it to receive advance notice of significant business transactions); United States v. CommScope, Inc., Civ. No. 1:07-CV-02200 (D.D.C. Jan. 6, 2007) (complaint alleged the acquiring party "will be able to exert substantial control" over a competitor, including through the right to appoint board members, obtain confidential competitive information, and influence executive compensation).

United/Continental Antitrust Compliance Guidelines contain numerous other deficiencies that, if left unresolved, create impermissible risks of domestic spillover. *Confidential Appendix 1* contains a detailed account of these deficiencies.

As a result of the close relationship between Lufthansa and JetBlue, the Department must evaluate the potential impact of an immunized Continental-Lufthansa alliance on the substantial competition that currently exists, and that might otherwise potentially exist in the future between Continental and JetBlue. This is not simply a domestic issue – JetBlue already provides service to eight international destinations from New York, including destinations in Mexico, Bermuda, the Bahamas, the Dominican Republic, and the Netherlands Antilles, seven of which are also served nonstop from New York by Continental.[10]

With its board seats and equity stake, Lufthansa has the ability to influence JetBlue's domestic and international scheduling, capacity, and pricing decisions. Its proposed immunized relationship with Continental will give it the ability to decide how much international flow traffic should be funneled onto Continental flights operating at Newark, and allow it to coordinate Continental's pricing, capacity and scheduling decisions in international markets. Rational profit-maximizing behavior may well cause Lufthansa to exert commercial influence within its immunized relationship with Continental (under the umbrella of antitrust immunity) to reduce capacity in some of the 38 nonstop markets from New York where Continental competes head-to-head with JetBlue. It may also cause Lufthansa to use its influence on these carriers to dampen the competition that might otherwise develop between them in international markets from New York where these carriers would otherwise be natural competitors. In these circumstances, the Joint Applicants' assertions that Lufthansa's simultaneous investment

---

[10] *See* OAG, October 2008 Schedules. JetBlue is actively expanding its international services. *See, e.g.*, "JetBlue Details Extent of Shift in Transcon and Caribbean Service," Aviation Daily (Sept. 11, 2008); "JetBlue Adds Caribbean Services in Boston and Florida Markets," Aviation Daily (Oct. 21, 2008).

relationship and ATI relationship with two hub carriers at New York "raises no issue relevant to this application" is fundamentally incorrect. (Answer at 3). The Department cannot permit Lufthansa to act as the intermediary in a restraint on competition between Continental and JetBlue. At a minimum, these interlocking relationships create a significant issue as to the potential risk of suppressing the current competition between JetBlue and Continental.

The Department must impose rigorous conditions – including relinquishing of Lufthansa's board seats and restructuring Lufthansa's equity stake in JetBlue -- before authorizing immunized cooperation with Continental. Moreover, given the fact that United and JetBlue also compete, the Department should review the United-Lufthansa grant of antitrust immunity to determine whether the necessary arrangements are in place to insure that no domestic spillover will arise within that context.

VI. IMMUNIZED COOPERATION BETWEEN TWO U.S. CARRIERS IN LIMITED ENTRY MARKETS IS CONTRARY TO DOT PRECEDENT AND OPEN SKIES POLICY.

As detailed above in Section III, the Star ATI applicants have proposed a limited joint venture involving cooperation between Continental, United, Lufthansa and Air Canada for *transatlantic* passengers. Under clearly established DOT precedent, immunity granted to U.S. carriers is an extraordinary remedy that must be narrowly tailored to immunize specifically identified consumer benefits associated with a particular agreement – and no more. Order 2005-12-12 at 33. In these circumstances, there is no basis for immunizing any coordination between Continental with United outside the transatlantic.

It is particularly important that United and Continental not be allowed to coordinate in limited entry markets outside the transatlantic. China and Brazil (discussed in Section III.A. above) are prime examples of important limited entry countries where United and Continental compete today – but where competition would be eliminated under the overly broad scope of global immunity proposed by the Joint Applicants. Without Open Skies, the competitive

restrictions in such markets prevent other carriers from entering the market and mitigating potential harm of the expanded alliance to consumers.

The Department has long insisted on Open Skies as a fundamental prerequisite to authorizing antitrust immunized alliance cooperation. First, Open Skies ensures that ATI applicants are unlikely to be able to charge supra competitive prices, because de jure and de facto open entry provides effective competitive discipline. Second, ATI approvals have been used to advance U.S. aviation policy objectives – by persuading countries to open their markets to obtain ATI alliance benefits for their homeland carriers.[11] Approval of the proposed global ATI between United and Continental would permit full coordination of fares and service levels in highly restricted markets, and also would not result in the consummation of any new Open Skies agreements.

The Joint Applicants do not dispute that open skies is a fundamental prerequisite necessary to support ATI partnerships. The Joint Applicants note that U.S.-foreign carrier ATI grants do not strictly limit the immunity to open skies countries: "For example, Delta's grant of immunity for its alliance with Air France and other SkyTeam members includes immunity to engage in cooperation with respect to services and routings between the United States and Russia, even though Russia has not entered into an open skies agreement with the United States." (Nov. 3 Answer at 5). The very point of ATI alliances is to enable the benefits of end-

---

[11] As explained by the DOJ, "DOT may approve and immunize an anticompetitive transaction if it determines that the transaction is necessary to advance important public benefits that outweigh the anticompetitive effects . . ." (DOJ Comments, OST-2001-11029 at 48). The DOJ noted that the achievement of open skies with an important aviation trading partner might justify such approval, but only if it were the least anticompetitive way to achieve that goal. *Id.* Here, there would be no advancement of open skies (or any other international aviation policy objective) by authorizing ATI cooperation between United and Continental in limited-entry markets.

to-end network combinations (such as U.S.-Russia via Paris), which must be carefully balanced against any potential for reduction of competition between the U.S. and the homeland country involved.

However, there are no end-to-end network benefits created by ATI cooperation between United and Continental in limited-entry markets from the United States, such as U.S.-China, U.S.-Brazil, and U.S.-Mexico. Instead, by authorizing ATI cooperation, the Department would eliminate all competition between Continental and United on large and important third and fourth freedom routes. Due to the absence of available frequencies and/or designations, Delta and other carriers would be unable to respond.

VII. THE INSUFFICIENT RECORD EVIDENCE AND IRREGULAR PROCEDURES APPLIED IN THIS PROCEEDING VIOLATE THE ADMINISTRATIVE PROCEDURE ACT

Delta is very concerned that the Department has fast tracked this application and has failed to develop the necessary evidence and follow its own established procedures for the careful consideration of antitrust immunity applications. Failing to remedy these evidentiary defects and curtailing interested parties' opportunity to comment will lead to an infirm decision that is ripe for judicial challenge.

Delta filed a motion on October 30, 2008, identifying important information that was missing from the record, which Delta further elaborated on in its Surreply of November 10. The Scheduling Order ignored these concerns – claiming erroneously and without support – that the information requested by Delta was already in the record. Order 2008-11-8 at 2. The Order merely referred generally to sections of the Joint Applicants' advocacy materials which failed to address the specific and detailed questions posed by Delta. The record does not contain important and relevant information concerning the interrelated activities associated with Lufthansa's investment in JetBlue; nor does it contain specific and concrete plans of the Joint Applicants to coordinate in non-transatlantic and limited entry markets; nor do the Joint

Applicants discuss the impact of their intended coordination on international service at the competing hubs of Newark and Washington Dulles.

The 10-way antitrust immunity sought by the Joint Applicants would create the largest antitrust immunized alliance grouping ever approved. This is not a trivial matter. It demands the same strict scrutiny and high evidentiary standard that has been applied to other immunized alliances involving more than one major U.S. carrier. Under the Administrative Procedure Act (APA), the Department has a regulatory obligation to consistently apply its precedents and evidentiary standards to similarly situated applicants in ATI proceedings.[12] The Department has not yet developed the substantial evidence it needs to make an informed public interest decision on critical aspects of the application.

Under 5 U.S.C. § 706 (2)(A), the reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be -- arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Additionally, 5 U.S.C. § 706 (2)(E) prescribes that a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be -- unsupported by substantial evidence in a case subject to sections 556 and 557 of this title [5 USC §§ 556 and 557] or otherwise reviewed on the record of an agency hearing provided by statute." "An agency must make findings that support its decision, and those findings must be supported by substantial evidence."[13] Additionally, the Supreme Court has concluded that substantial evidence "means such relevant evidence as a reasonable

---

[12] The Department issued three separate and detailed evidentiary requests when it evaluated SkyTeam I, including a supplemental request after the procedural schedule had been established: Order 2004-11-15 (Requesting Additional Information); Order 2005-4-21 (Seeking Clarification of the Record); Order 2005-6-1 (Establishing Procedural Schedule); Order 2005-6-8 (Additional Supplement to the Record).

[13] *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

mind might accept as adequate to support a conclusion."[14] Moreover, an agency must articulate a "rational connection between the facts found and the choices made."[15]

Not only did the Department fail to require import information necessary to complete the record and make a sound public interest decision -- the Department also deviated, without explanation, from its own procedural regulations and established practice in antitrust immunity proceedings. Instead of the standard 21 day Answer period prescribed by 14 C.F.R. 303.42 (and followed by the Department in an unbroken line of nearly 30 antitrust immunized alliance cases)[16], the Department here set a shortened answer period of just 14 days – depriving carriers of a significant portion of the comment period – at a time when they were fully expecting that important additional information would be supplied to complete the record.

It is elementary that an agency must apply its rules with consistency and may not depart from precedent without a reasoned explanation. *See* Channel 51 of San Diego, Inc. v. FCC, No. 95-1128, 1996 WL 139413 at * 4 (D.C. Cir. Mar. 29, 1996) ("an agency must conform to its

---

[14] *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938); *E.g., Pierce v. Underwood*, 487 U.S. 55, 565 (1988); *Steadman v. SEC*, 450 U.S. 91, 99 (1981); *Consolo v. FMC*, 383 U.S. 607, 619-20 (1966); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951).

[15] *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938) (citing *Interstate Commerce Comm'n v. J-T Transport Co.*, 368 U.S. 81, 93 (1961); *United States v. Carolina Carriers Corp.*, 315 U.S. 475, 488, 489 (1942); *United States v. Chicago, M., St. P. & P.R. Co.*, 294 U.S. 499, 511 (1935)); *E.g., Bowman Transp., Inc. V. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974).

[16] *See e.g.,* Notice Establishing Procedural Schedule, Joint Application of Alitalia, Czech, Delta, KLM, Northwest, and Air France, OST-2007-28644, (Oct. 18, 2007) (21 day answer period); Order Establishing a Procedural Schedule, Order 2006-7-15, Joint Application of Austrian, British Midland, Lufthansa, LOT, Scandinavian, Swiss, TAP, and United, OST-2005-22922, (July 12, 2006) (21 day answer period); Order Establishing Procedural Schedule, Order 2005-6-1, Joint Application of Alitalia, Czech, Delta, KLM, Northwest, and Air France, OST-2004-19214, (June 1, 2005) (21 day answer period); Notice Establishing Procedural Dates, Joint Application of American West and Royal Jordanian, OST-2004-18613, (Sept. 17, 2004) (21 day answer period); Scheduling Notice and Directing Applicants to File Copies of Confidential Exhibits, Joint Application of Delta, Air France, Alitalia, and Czech, OST-2001-10429, (Sept. 21, 2001) (21 day answer period); Joint Application of American Airlines and British Airways, Scheduling Notice, OST-2001-10387-12 and 2001-10388-7, (Aug. 27, 2001) (21 day answer period).

prior decisions or explain the reason for its departure from such precedent") (quoting Gilbert v. NLRB, 56 F.3d 1438, 1445 (D.C.Cir.1995)). "[W]here an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and 18 capricious." ANR Pipeline Co. v. FERC, 71 F.3d 897, 901 (D.C. Cir. 1995). Similarly, in Atchison, Topeka & Santa Fe R. Co. v. Wichita Board of Trade, 412 U.S. 800, 808 (1973), the Court articulated the principle that an agency action is arbitrary and capricious if it represents an unexplained departure from an agency's prior policies and precedents.

The Department should remedy these defects by requiring the additional information be submitted to the record – and affording interested parties a further and meaningful opportunity for comment.

VIII. CONCLUSION

While Delta understands that Joint Venture alliances can produce substantial consumer benefits, the Department's examination of the Star expansion proposal needs to be evaluated with the same scrutiny and caution that has been applied to other alliances involving multiple U.S. carriers. Immunity must be strictly limited to that necessary to achieve important public interest benefits – which in this case clearly precludes any immunity for regions outside the transatlantic, and especially in non-open skies countries where other U.S. carriers are precluded from responding competitively. Due to the unique investment relationship between Lufthansa and JetBlue, any grant of antitrust immunity to coordinate involving Lufthansa, Continental and United must be subject to stringent conditions to protect the large and important New York City market from harmful spillover effects.

Respectfully submitted,

Alexander Van der Bellen
Managing Director, Government Affairs
& Associate General Counsel
DELTA AIR LINES, INC.

Continental and the Star ATI Carriers Operate Overlapping Nonstop Service on 14 City Pairs, 13 of Which Are Outside the Scope of the Proposed Transatlantic Joint Venture

Outside Scope of JV?	City1	City2	No. of 5% Competitors pre-ATI	Star ATI Share	CO Share	Combined Share	Annual Bookings
Y	Lisbon, Portugal	New York, NY, USA	2	64%	30%	94%	115,595
Y	Houston, TX, USA	Calgary, AB, Canada	2	40%	55%	96%	83,209
Y	Houston, TX, USA	Toronto, ON, Canada	2	48%	39%	87%	53,733
Y	New York, NY, USA	Ottawa, ON, Canada	2	55%	40%	94%	46,922
Y	Cleveland, OH, USA	Toronto, ON, Canada	2	33%	65%	98%	21,030
Y	New York, NY, USA	Zurich, Switzerland	3	57%	17%	74%	165,310
Y	New York, NY, USA	Vancouver, BC, Canada	3	45%	9%	55%	152,172
Y	New York, NY, USA	Halifax, NS, Canada	3	24%	34%	58%	29,069
Y	New York, NY, USA	Toronto, ON, Canada	4	45%	16%	61%	555,595
Y	New York, NY, USA	Montreal, QC, Canada	4	61%	15%	76%	192,000
Y	Stockholm, Sweden	New York, NY, USA	4	47%	16%	63%	136,515
Y	Copenhagen, Denmark	New York, NY, USA	5	49%	19%	68%	131,532
Y	Geneva, Switzerland	New York, NY, USA	5	48%	26%	74%	110,533
N	Frankfurt, Germany	New York, NY, USA	4	41%	11%	51%	302,758
						Total	2,095,973

These 14 city pairs account for nearly 2.1 million annual bookings in total, with 667,000 of them on city pairs where there are only two or three current competitors.

Sources: OAG November 2008-October 2009; MIDT YE 1Q2008

88% of Continental International Bookings Worldwide Are in Star ATI City Pairs

Region	CO City Pairs	CO City Pairs also Served by Star ATI	Share of CO City Pairs also Served by Star ATI	CO Bookings	CO Bookings on City Pairs also Served by Star ATI	Share of CO Bookings on City Pairs also Served by Star ATI
Asia/Australia	4,817	3,414	70.9%	633,983	608,137	95.9%
Canada	3,028	2,673	88.3%	611,838	609,177	99.6%
Latin America	15,455	5,883	38.1%	3,817,942	3,054,796	80.0%
Europe, Africa, Middle East, India	18,467	13,480	73.0%	2,897,219	2,756,884	95.2%
All Regions	41,767	25,450	60.9%	7,960,982	7,028,994	88.3%

Source: MIDT YE1Q2008

Adding Continental to Star ATI Will Reduce Competition in 6,500 U.S. – International City Pairs Globally, Affecting 7.3 Million Passengers

	Number of Overlap City Pairs	Bookings on Overlap City Pairs
China	477	321,191
Hong Kong	59	198,541
Japan	166	115,850
All Others	98	49,889
Asia/Australia Total	**800**	**685,471**
Mexico	412	215,359
Brazil	174	64,616
Guatemala	37	40,013
El Salvador	43	29,892
All Others	292	53,191
Latin America Total	**958**	**403,071**
Canada	1,354	2,526,634
Canada Total	**1,354**	**2,526,634**

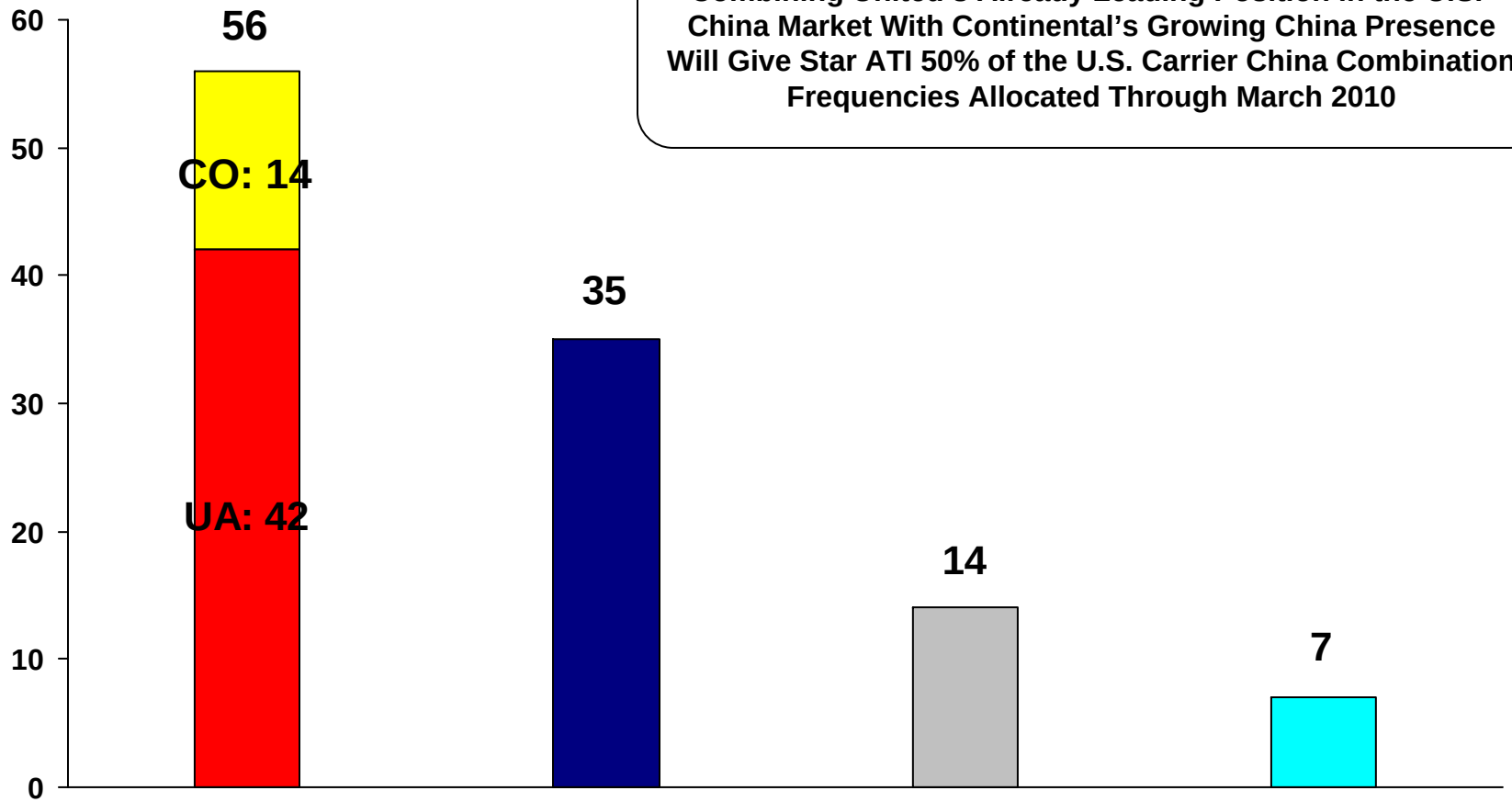
	Number of Overlap City Pairs	Bookings on Overlap City Pairs
Germany	367	894,092
Switzerland	175	550,423
Sweden	301	353,852
Israel	79	292,261
Denmark	187	290,430
Portugal	319	234,398
United Kingdom	288	228,672
Norway	430	211,931
Netherlands	43	161,894
India	182	85,924
France	67	69,942
Belgium	36	57,723
Italy	142	46,791
Greece	80	40,072
Spain	53	34,423
All Others	639	114,561
Europe, Africa, Middle East, India	**3,388**	**3,667,389**
All Regions	**6,500**	**7,282,565**

Note: City pairs classified as “overlap” when Star ATI and CO each have at least 5% share and total Star ATI + CO share is at least 40%.
Source: MIDT YE1Q2008

Adding Continental to Star ATI Will Reduce Competition in the U.S.- China Market Where New Entry is Blocked by Bilateral Constraints

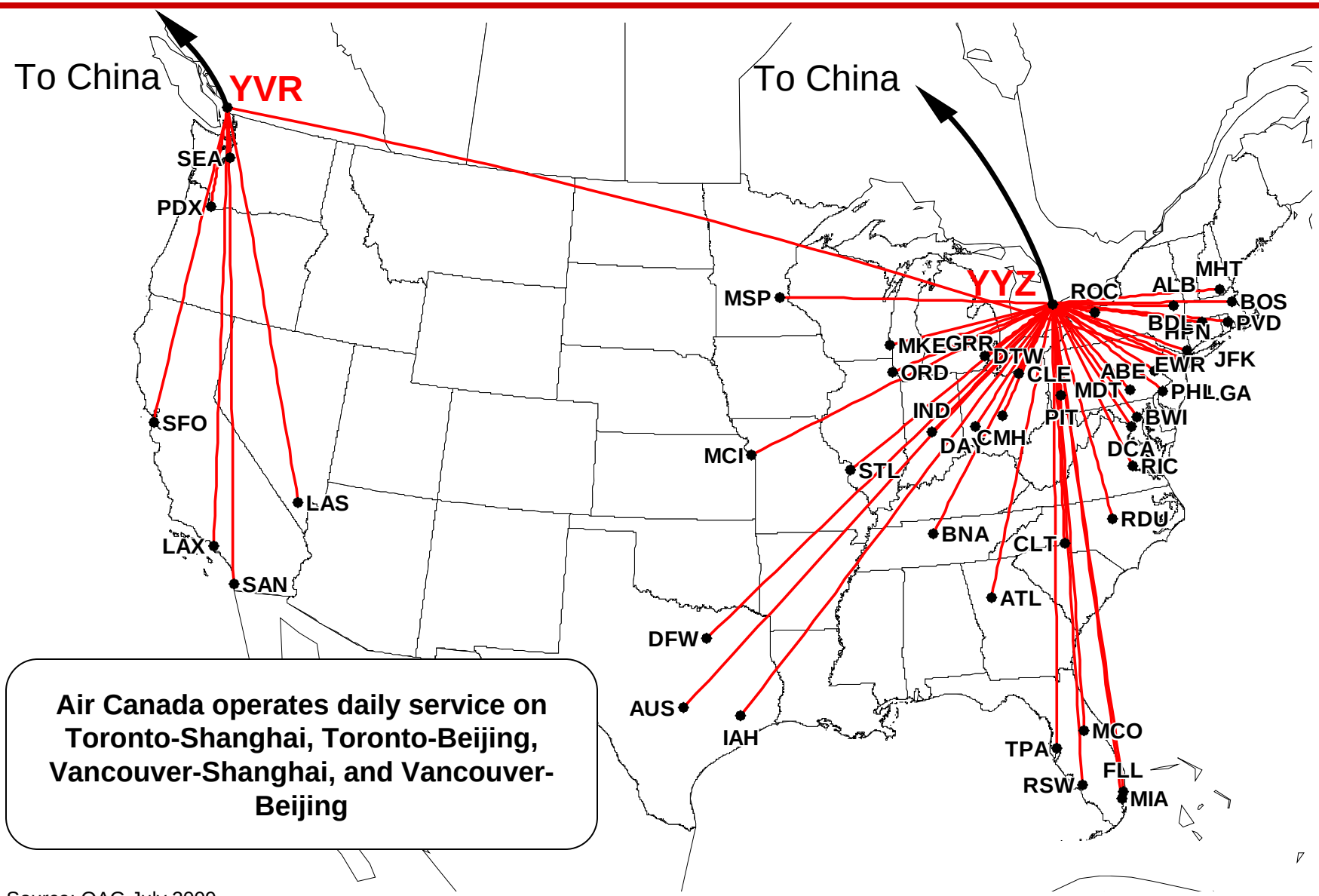
Weekly U.S. Carrier U.S.-China Combination Frequencies Allocated Through March 2010

Combining United's Already Leading Position in the U.S.-China Market With Continental's Growing China Presence Will Give Star ATI 50% of the U.S. Carrier China Combination Frequencies Allocated Through March 2010



Source: DOT U.S.-China Combination Frequency Awards Through March 2010

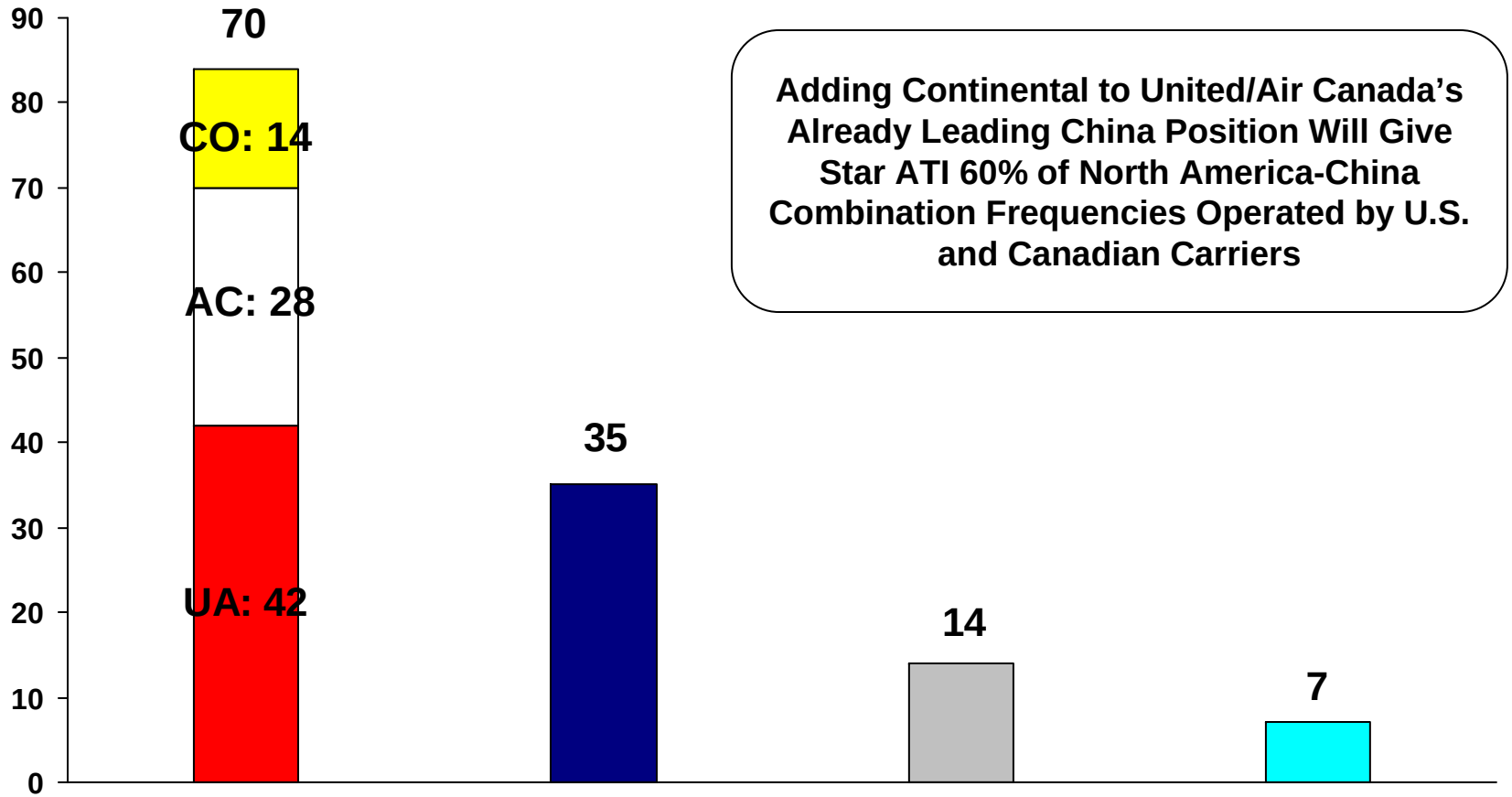
Air Canada Operates an Extensive U.S. Network That Feeds into Its 28 Weekly Canada – China Flights



Source: OAG July 2009

Adding Continental to Star ATI Will Reduce Competition in the U.S.- China Market Where New Entry is Blocked by Bilateral Constraints

Weekly U.S./Canadian Carrier China Combination Frequencies



Adding Continental to United/Air Canada's Already Leading China Position Will Give Star ATI 60% of North America-China Combination Frequencies Operated by U.S. and Canadian Carriers

Source: DOT U.S.-China Combination Frequency Awards Through March 2010 for U.S. carriers; OAG July 2009 for Air Canada

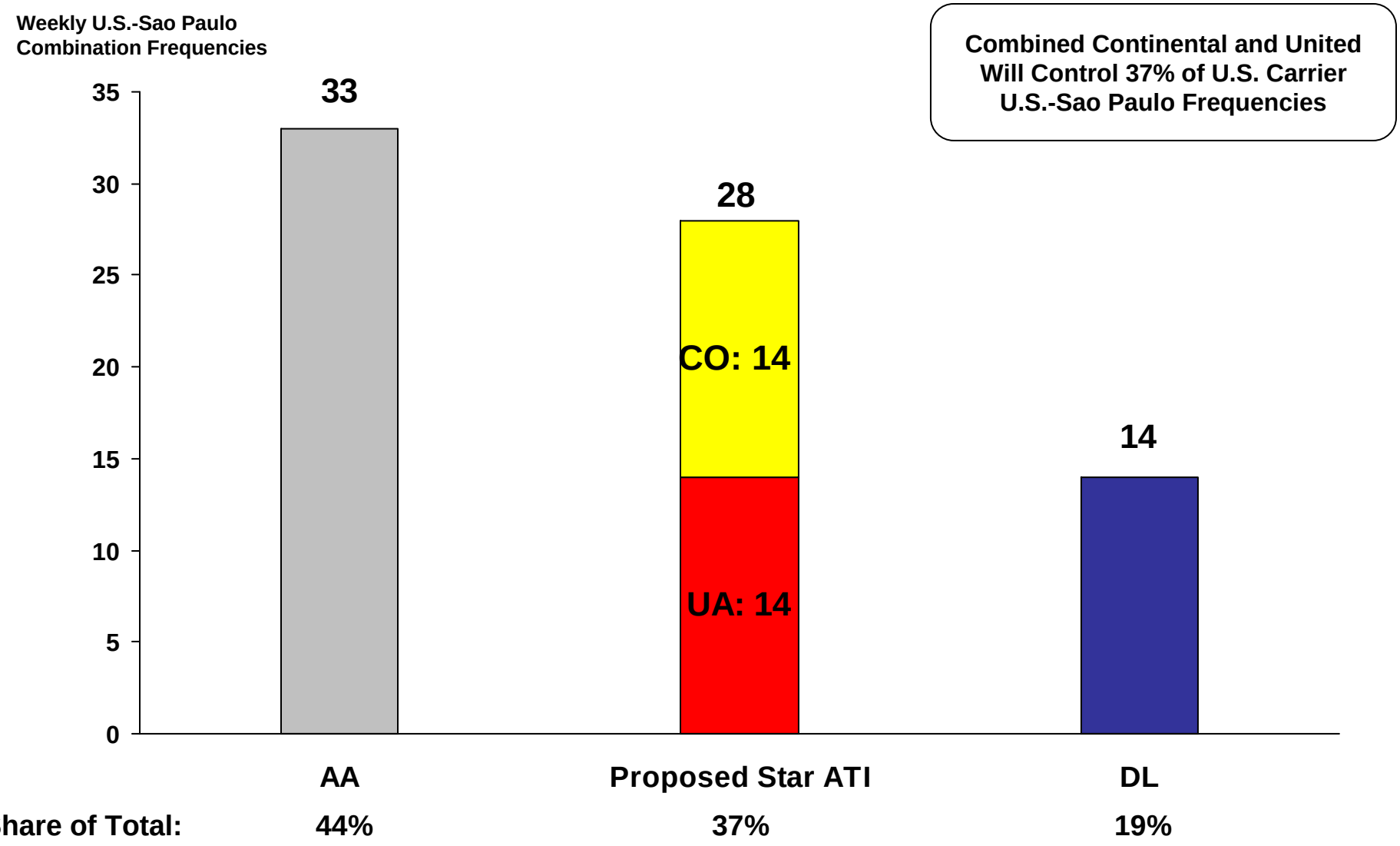
Adding Continental to Star ATI Will Reduce Competition in the U.S.- China Market Where New Entry is Blocked by Bilateral Constraints

Example Star ATI/Continental U.S.-China Overlap City Pairs

Beijing, China to	Star ATI Share	CO Share	Combined Share
Boston, MA	67%	15%	81%
Houston, TX	49%	34%	84%
Atlanta, GA	57%	14%	71%
Raleigh/Durham, NC	68%	15%	83%
Miami, FL	51%	23%	74%
Orlando, FL	63%	16%	79%
Pittsburgh, PA	68%	14%	82%
St Louis, MO	69%	6%	75%
Indianapolis, IN	71%	8%	79%
Cleveland, OH	56%	28%	85%
Austin, TX	71%	9%	80%
Kansas City, MO	70%	10%	80%
Columbus, OH	65%	14%	79%
Tampa, FL	62%	18%	80%
Charlotte, NC	71%	11%	81%
New Orleans, LA	65%	20%	85%
Baltimore, MD	58%	15%	72%
San Antonio, TX	74%	7%	81%
Hartford, CT	72%	13%	85%
Nashville, TN	64%	16%	80%
Buffalo, NY	57%	14%	71%
All US-China Overlap City Pairs	58%	15%	73%

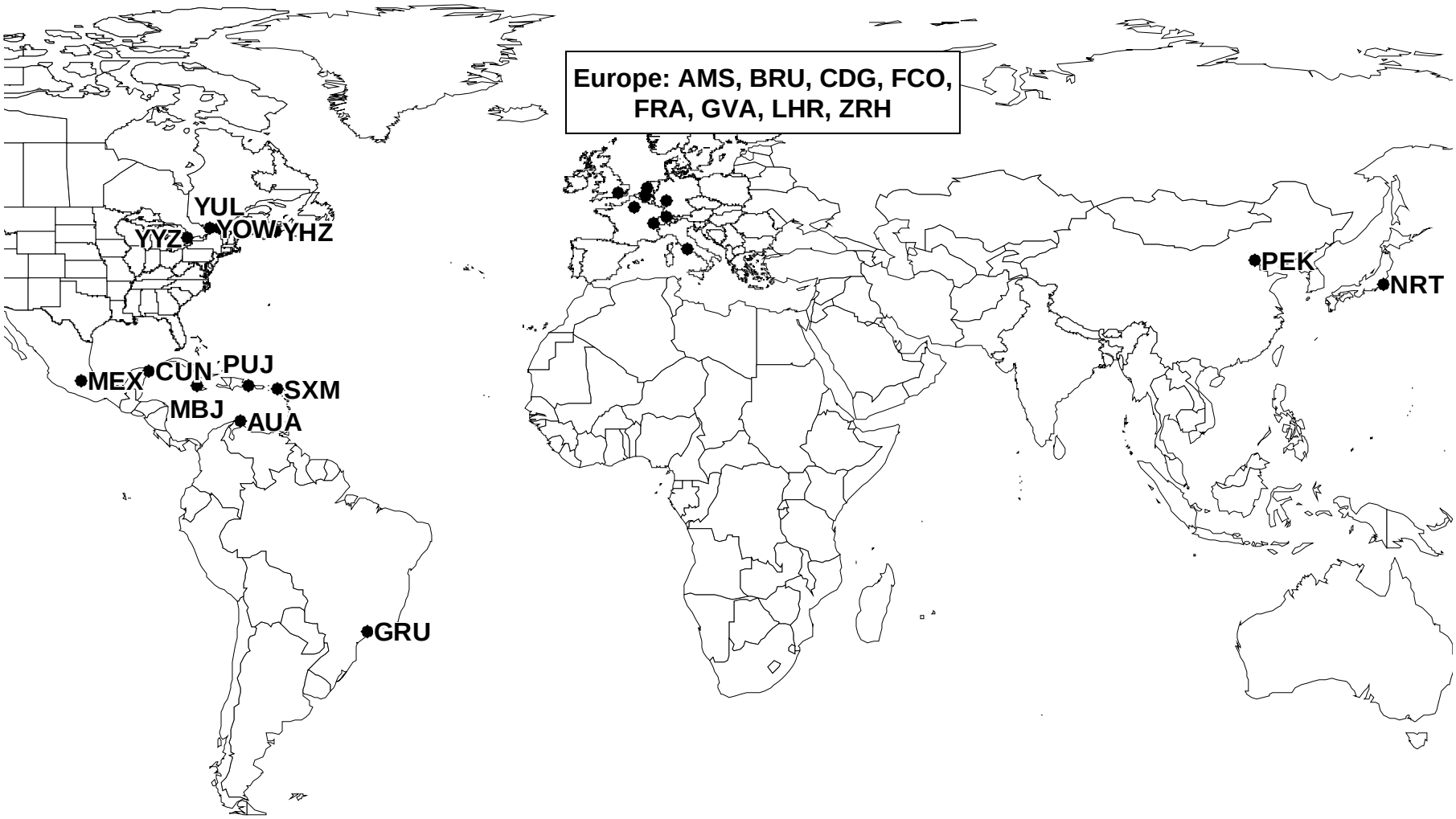
Note: City pairs classified as “overlap” when Star ATI and CO each have at least 5% share and total Star ATI + CO share is at least 40%.
Source: MIDT YE1Q08

Adding Continental to Star ATI Will Reduce Competition in the U.S.-Sao Paulo Market Where New Entry is Blocked Indefinitely by Bilateral Constraints



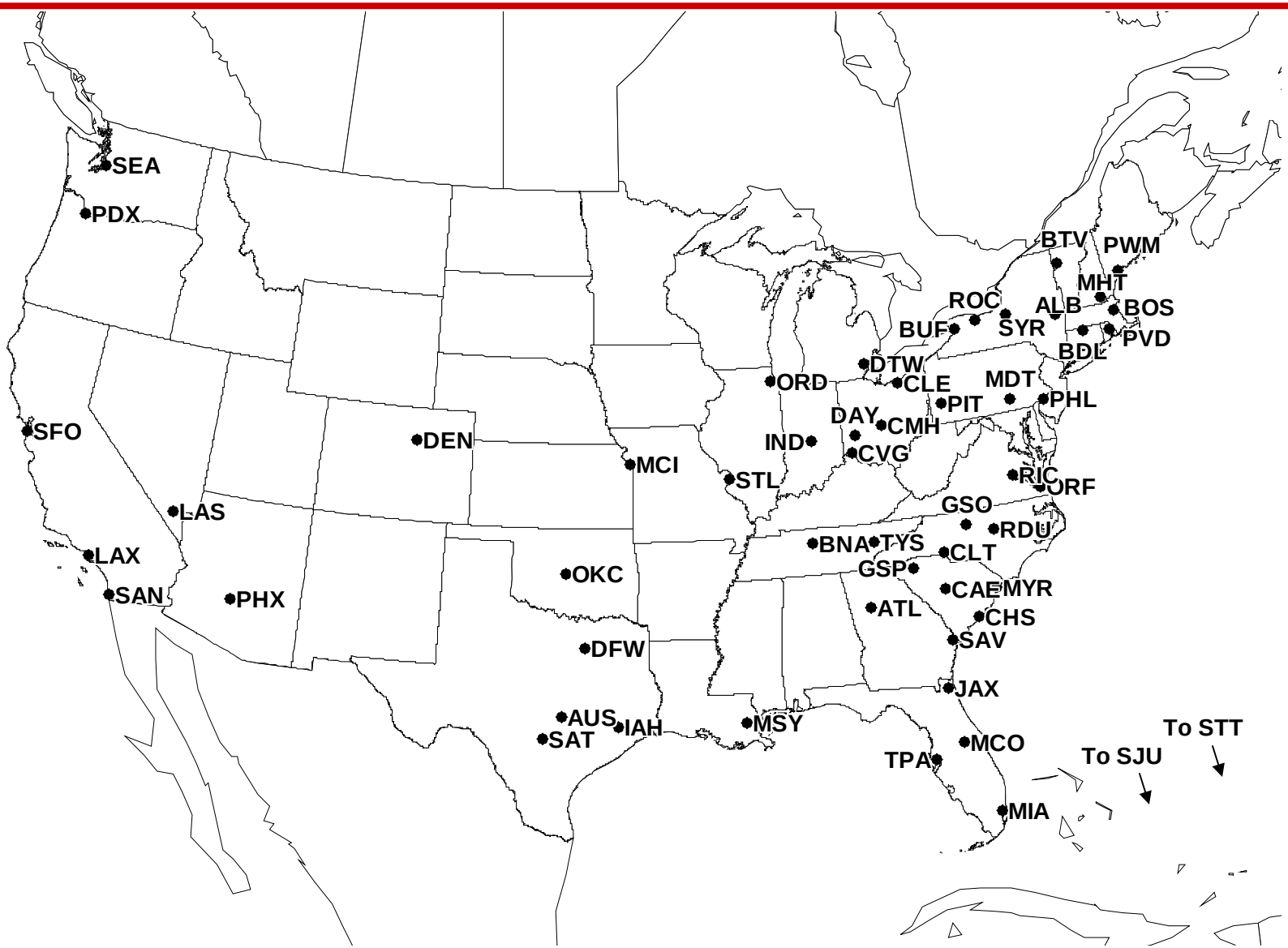
Source: OAG March 2009; MIDT YE1Q08

Continental and United Operate Overlapping Nonstop Service From Newark and Dulles To 21 International Destinations



Source: OAG November 2008-October 2009

Continental and United Operate Overlapping Nonstop Service From Newark and Dulles To 55 U.S. Destinations



Source: OAG November 2008-October 2009

CERTIFICATE OF SERVICE

The foregoing Answer (Public Version) has been served this 26th day of November, 2008, upon the following persons via email:

amendelsohn@sherblackwell.com
anbird@fedex.com
anita.mosner@hklaw.com
benjamin.slocum@usairways.com
bill@mietuslaw.com
bob.kneisley@wnco.com
bruce.rabinovitz@wilmerhale.com
byerlyjr@state.gov
carl.nelson@aa.com
cdonley@ssd.com
david.heffernan@wilmerhale.com
dhainbach@ggh-airlaw.com
dkirstein@yklaw.com
donna.kooperstein@usdoj.gov
dvaughan@kelleydrye.com
dwight.moore@ustranscom.mil
efaberman@wileyrein.com
fbavent@airlineinfo.com
gmurphy@crowell.com
howard_kass@usairways.com
jasilversmith@zsrlaw.com
jeffrey.manley@united.com
jennifer.trock@pillsburylaw.com
jhill@dowlohnes.com
jill.ptacek@usdoj.gov
jim.ballough@faa.gov
John.Fredericksen@suncountry.com
jrichardson@johnlrichardson.com
jyoung@yklaw.com
kathleen.knowlton@wilmerhale.com
kenneth.quinn@pillsburylaw.com
kevin.montgomery@polaraircargo.com
ldwasko@erols.com
lhalloway@crowell.com
matwood@sherblackwell.com
maura.mcconville@pillsburylaw.com
mcmillin@woa.com
mgoldman@sgbdc.com
michael.billiel@usdoj.gov
mike.orr@airlineinfo.com
mlbenge@zsrlaw.com
mroller@rollerbauer.com
mrosia@crowell.com
msinick@ssd.com
peter.irvine@dot.gov
pmifsudklm@earthlink.net
pmurphy@lopmurphy.com
pruden@asta.org
rbkeiner@crowell.com
rbtrinder@zsrlaw.com
rdmathias@zsrlaw.com
recohn@hhlaw.com
richard.liebeskind@pillsburylaw.com
robert.land@jetblue.com
robert.young3@usdoj.gov
rpommer@atlasair.com
rsilverberg@sgbdc.com
russell.bailey@alpa.org
scott.mcclain@delta.com
slachter@lachter-clements.com
todd.homan@dot.gov